

Message Text

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ACTION L-03

INFO OCT-01 EUR-25 ISO-00 TRSE-00 CIAE-00 INR-10 NSAE-00

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FM AMEMBASSY BONN

TO SECSTATE WASHDC 3162

DOD WASHDC

TREASURY DEPT WASHDC

INFO CINCUSAREUR HEIDELBERG

LIMITED OFFICIAL USE SECTION 01 OF 02 BONN 09370

E.O.: 11652 N/A

TAGS: MILI, GW, EGEN

SUBJECT: U.S. DEPENDENTS EMPLOYED BY MILITARY BANKING
FACILITIES

REF: STATE 91413

1. THE EMBASSY HAS STUDIED THE PROPOSALS AND VIEWS EXPRESSED IN THE REFTEL AND HAS A NUMBER OF VIEWS AND SOME INFORMATION WHICH MAY AFFECT THE NATURE OF THE EMBASSY'S PRELIMINARY INFORMAL APPROACH TO THE FRG FOREIGN OFFICE CONCERNING PROPOSED DISCUSSIONS. WHILE THE EMBASSY IS NOT INFORMED OF THE PRECISE NATURE OF THE CURRENT SITUATION BETWEEN THE MILITARY BANK OPERATIONS OF AMEXCO AND CHASE (REFERRED TO AS MILITARY BANKS) ON THE ONE HAND, AND THEIR GERMAN EMPLOYEES AND THOSE EMPLOYEES WORKS COUNCILS ON THE OTHER, WE HAVE HEARD THAT AMERICAN DEPENDENT EMPLOYEES (ADES) ARE AGAIN BEING EMPLOYED BY THE BANKS SUBJECT TO CLARIFICATION OF THEIR STATUS FOR ALL CONCERNED. WE UNDERSTAND FURTHER THAT THE BANKS COULD HAVE SOME DIFFICULTY HIRING FRG NATIONALS FOR AT LEAST SOME OF THE OPENINGS, AND ARE THUS PARTIALLY DEPENDENT ON ADES TO REMAIN IN OPERATION.

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2. NEGOTIATION OF AN AGREEMENT AS PROPOSED COULD ESTABLISH A PRECEDENT FOR TAKING A PROBLEM NOT UNEQUIVOCALLY OR SATISFACTORILY REGULATED BY THE SA AND DEALING WITH IT IN A CLARIFYING AGREEMENT. WHILE ARTICLE 72 (C), PROVIDING EXPRESSLY FOR ADMINISTRATIVE AGREEMENTS THAT MAY ADD TO THOSE BENEFITS PROVIDED IN 72 (A) AND (B), FURNISHES A SPECIFIC BASIS FOR SEEKING SUCH AN AGREEMENT RE NON-APPLICABILITY OF THE FRG LABOR LAW TO ADES, SUCH AGREEMENTS ARE THEORETICALLY POSSIBLE WITH RESPECT TO AND CONSISTENT WITH OTHER TREATY ARTICLES EVEN IN THE ABSENCE OF SUCH A PROVISION. OUR REQUEST FOR THE FRG TO INCUR WHAT WOULD APPEAR TO BE A NEW OBLIGATION THAT WOULD EXPAND THE EXEMPTIONS OF MILITARY BANKS IN RESPECT TO THEIR ADES, COULD ENCOURAGE THE FRG TO MAKE CORRESPONDING REQUESTS FOR AGREEMENTS EITHER EXPANDING U.S. OBLIGATIONS OR CURTAILING U.S. RIGHTS IN OTHER AREAS OF THE SOFA OR SA WHERE, QUITE APART FROM POLITICAL REASONS, THE U.S. MAY BE UNABLE FOR THE INTERNAL CONSTITUTIONAL OR LEGAL REASONS TO AGREE WITHOUT A FULL TREATY AMENDING THE SOFA OR SA.

3. WHILE THE FRG FEDERAL GOVERNMENT'S INTEREST MAY BE MINIMAL AS STATED IN PARA 1 OF REFTTEL, ITS ABILITY TO BE FORTHCOMING WITH RESPECT TO A U.S. REQUEST MIGHT BE CIRCUMSCRIBED BY THE FACT THAT IN THIS VERY AREA AND AT THIS TIME THE GERMAN EMPLOYEES OF THE MILITARY BANKS HAVE, THROUGH THEIR WORKS COUNCIL, RAISED THIS QUESTION AND MAY YET TAKE THE MATTER TO THE LABOR COURTS. THESE COURTS ARE NOT LIKELY TO BE SYMPATHETIC TO INTRICATE ARGUMENTS DISPUTING THE APPLICABILITY OF FRG LABOR LAWS AND THUS THE COURTS' JURISDICTION BASED ON THE SOFA, SA AND PS; RATHER, THEY WILL TEND TO SEE THE PROBLEM AS A CASE OF DISCRIMINATION AGAINST NON-GERMAN EMPLOYEES OF THE MILITARY BANKS. WERE THE MATTER CLEARLY SETTLED BY AN ADMINISTRATIVE AGREEMENT, IT WOULD BE EASIER TO DEAL WITH ANY SUCH CASE. MOREOVER, IT WILL BE RECALLED THAT THE QUESTION OF THE APPLICATION BY THE NATO SENDING STATES OF THE 1974 FRG PERSONNEL REPRESENTATION LAW IS NOT YET FULLY LIMITED OFFICIAL USE

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SETTLED. (SEE BONN 5663 AND STATE 104443) WHILE WORKS COUNCIL ELECTIONS IN JUNE HAVE BEEN SET FOR THE INCREASED MEMBERSHIP OF SUCH COUNCILS REQUIRED BY THE NEW LAW, THE DEFINITIVE SETTLEMENT OF THIS QUESTION STILL REQUIRES MUTUAL AGREEMENT ON THE MEANS BY WHICH THE SENDING STATES RESERVE THEIR RIGHTS. IT IS QUESTIONABLE WHETHER THE FRG WOULD BE RECEPTIVE TO THE EXEMPTION OF ADES OF THE MILITARY BANKS FROM THE

REACH OF FRG LABOR LEGISLATION WHILE THIS MATTER IS
NOT SETTLED.

4. USAREUR HAS BEEN REQUESTED TO REPORT TO ADDRESSEES

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TO SECSTATE WASHDC 3163

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AND THE EMBASSY BY CABLE THE DEVELOPMENTS THAT LED
TO FRG FOREIGN OFFICE RECOGNITION THAT ADES ARE NOT
SUBJECT TO GERMAN SOCIAL SECURITY REQUIREMENTS
(COVERING WIDE RANGE OF PRE- AND POSTRETIREMENT
BENEFITS) BY REASON OF THEIR PERSONAL STATUS AS
DEPENDENTS AND THE LANGUAGE OF ARTICLE 13 OF THE SA.
THIS RECOGNITION APPEARS TO MEAN THAT WHAT REMAINS TO
BE SETTLED IS ONLY THE QUESTION WHETHER ADES ARE OR
SHOULD BE EXEMPT FROM THOSE PROVISIONS OF GERMAN
LABOR LAW OTHER THAN SOCIAL SECURITY REQUIREMENTS
(WHATEVER THE LATTER TERM ENCOMPASSES).

5. USAREUR JAG HAS, AT LEAST OFF THE RECORD,
' TAKEN THE POSITION FOR A NUMBER OF MONTHS THAT
THE PROVISIONS OF THE RELEVANT AGREEMENTS DO NOT,
REPEAT NOT, EXEMPT ADES FROM THE REQUIREMENTS OF FRG
LABOR LAW (SOCIAL SECURITY REQUIREMENTS EXCEPTED).
IN THE FACE OF THE REASONS ADDUCED FOR THIS POSITION,

THE STATE DEPARTMENT AND THE DEFENSE AND TREASURY REPS
WISHING TO DISCUSS THIS MATTER WITH THE FOREIGN OFFICE,
WOULD NEED TO DEVELOP A PLAUSIBLE ARGUMENT FOR
EXEMPTION UNDER THE SOFA, SA AND PS. RAISING THIS
MATTER, WHILE IT WOULD PROBABLY NOT ENDANGER THE
STATUS OF NON-APPROPRIATED FUND ACTIVITIES (NAF) WHICH
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ARE CONSIDERED "INTEGRAL PARTS OF THE U.S. FORCE" IN
PARA 4 (A) OF THE SECTION OF THE PS REFERRING TO
ARTICLE I (1)(A) OF THE SOFA, COULD LEAD THE FRG TO
QUESTION THE EXEMPTIONS NOW ACCORDED TO THE APPROXI-
MATELY 70-90 DEPENDENT EMPLOYEES OF 6 CREDIT UNIONS,
THE AMERICAN RED CROSS, THE USO, UNITED SEAMEN'S
ASSOCIATION AND THE 14 ASSIMILATED UNIVERSITIES.
THESE ORGANIZATIONS WITH THE EXCEPTION OF THE 6 CREDIT
UNIONS EITHER ARE LISTED IN RE ARTICLE 71 (3) OF THE
PS OR HAVE BEEN ASSIMILATED PURSUANT TO ARTICLE 71 (4)
OF THE SA AS NON-GERMAN, NON-COMMERCIAL ORGANIZATIONS
ENTITLED UNDER ARTICLE 71 OF THE SA ONLY TO SPECIFIED
EXEMPTIONS, AND ARE NOT TO BE CONSIDERED AND TREATED
AS "INTEGRAL PARTS OF THE FORCE" AS ARE THOSE SIMILAR,
BRITISH AND CANADIAN ORGANIZATIONS LISTED IN RE
ARTICLE 71(2) OF THE PS. THE 6 CREDIT UNIONS HAVE BEEN
ASSIMILATED PURSUANT TO ARTICLE 72 (4) OF THE SA.
RAISING WITH THE FRG THE STATUS OF ADES OF MILITARY
BANKS LISTED IN ARTICLE 72 AS NON-GERMAN COMMERCIAL
ENTERPRISES, BASED EITHER ON THEIR PERSONAL STATUS AS
DEPENDENTS OR ON THE BANKS' STATUS UNDER
ARTICLE 72, COULD CAST DOUBT ON THE CURRENT EXEMPTED
STATUS OF THE ARTICLE 71 ORGANIZATION'S AND CREDIT
UNION'S ADES WITHOUT NECESSARILY RESULTING IN WHAT WE
SEEK WITH RESPECT TO THE MILITARY BANK ADES.

6. IN LIGHT OF THE ABOVE INTERPRETATIONS, WHICH VARY
FROM THOSE CONTAINED IN THE REFTEL, AND THE VIEWS OF
USAREUR JAG HITHERTO THAT ADES ARE NOT EXEMPTED FROM
GERMAN LABOR LAWS, THE EMBASSY CONSIDERS IT IMPORTANT
THAT A FULLY COORDINATED LEGAL ARGUMENT BE PUT TOGETHER
AND THAT THE OUTLINES OF THAT ARGUMENT BE MADE AVAIL-
ABLE TO THE EMBASSY BEFORE WE SEEK INFORMALLY TO OBTAIN
FRG AGREEMENT TO HEAR ARGUMENTS BY DOD AND TREASURY
REPS FOR REACHING AN AGREEMENT CONTAINING AN AGREED
INTERPRETATION OF THE SOFA, SA AND PS ACCORDING ADES
AND/OR THE MILITARY BANKS A STATUS CONSISTENT WITH OUR
WISHES AS STATED IN PARA 1 OF REFTEL. THE EMBASSY ALSO
CONSIDERS IT IMPORTANT THAT THERE BE ADEQUATE ALTERNA-
TIVE COVERAGE FOR ADES EMPLOYED BY THE BANKS IN THE
ABSENCE OF APPLICATION OF GERMAN LABOR LAW AND SUGGESTS
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THAT FULL CONFIRMATION BY THE NEW YORK AUTHORITIES
OF THE COVERAGE OF ADES EMPLOYED BY THE BANKS BY NEW
YORK STATE WORKMAN'S COMPENSATION AND OTHER LABOR LAW
BE OBTAINED, PARTICULARLY IN THE AREA OF DISABILITY
ENTITLEMENTS, DESPITE THE FACT THAT THE ADES ARE
HIRED, PERFORM THEIR SERVICES AND WOULD SUSTAIN
DISABILITIES ENTIRELY OUTSIDE OF NEW YORK AND THE U.S.
WE BELIEVE THAT ONLY IF THERE IS FULL CLARITY ON
THE BINDING NATURE AND EXTENT OF COVERAGE FOR ADES
IN THOSE AREAS OTHERWISE PROVIDED FOR BY GERMAN LABOR
LAW COULD U.S. NEGOTIATIONS BE EFFECTIVE IN SEEKING
TO CONVINCE THE FRG AUTHORITIES TO AGREE TO AN
ADMINISTRATIVE AGREEMENT AS PROPOSED.
HILLENBRAND

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